

# Morgan Lewis

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November 22, 2017

**VIA FACSIMILE**

The Honorable Victor Marrero  
 United States District Court Judge  
 Southern District of New York  
 United States Courthouse  
 500 Pearl Street, Suite 1040  
 New York, NY 10007-1312

Re: *Royal Park Investments SA/NV v. U.S. Bank National Association*,  
 Case No. 1:14-cv-02590-VM-RWL

Dear Judge Marrero:

I submit this letter on behalf of U.S. Bank National Association, as Trustee, (the “Trustee”) pursuant to Section II(B)(2) of Your Honor’s Individual Practices.

In accordance with Section II(B)(1) of Your Honor’s Individual Practices, the Trustee and Plaintiff Royal Park Investments SA/NV (“RPI”) (together with the Trustee, the “Parties”) exchanged letters on November 13, 2017, November 16, 2017, and November 20, 2017 regarding the bases for the Trustee’s planned motion to dismiss – or, in the alternative to stay – the claims in RPI’s new complaint in this action (the “Fees Complaint”).<sup>1</sup>

The Trustee’s November 13, 2017 letter identified multiple ways in which each of RPI’s claims in the Fees Complaint are deficient and subject to a motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). The Trustee’s November 16, 2017 letter provided RPI and the Court with a November 13, 2017 hearing transcript dismissing claims in a New York state court action nearly identical to RPI’s on grounds similar to those set forth in the Trustee’s November 13, 2017 letter.

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<sup>1</sup> RPI filed the Fees Complaint as a separate action on September 6, 2017. See Case No. 1:17-cv-06778, Dkt. 1 (S.D.N.Y.). On November 14, 2017, Your Honor ordered that Case No. 17-cv-06778 be consolidated with the underlying action, Case No. 14-cv-02590. Dkt. 342 (Order).

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Your Honor's recent consolidation order (Dkt. 342) does not change the deficiencies identified by the Trustee in RPI's Fees Complaint, which RPI either refutes or does not address.<sup>2</sup> RPI has not proposed any amendments to its Fees Complaint to address the Trustee's objections, as contemplated by Your Honor's Individual Practices. The Parties' correspondence has therefore failed to resolve any disputes regarding the appropriateness of filing a motion to dismiss, and a motion to dismiss is warranted for each of the reasons set forth in the Trustee's November 13, 2017 letter.

Pursuant to Your Honor's Individual Practices, the Trustee requests that Your Honor schedule a conference to provide preliminary guidance regarding the Trustee's planned motion to dismiss – or, in the alternative, to stay – the Fees Complaint.<sup>3</sup>

Sincerely,

/s/ Benjamin P. Smith

Benjamin P. Smith

c: Darryl J. Alvarado, Esq. (via email)  
Hillary B. Stakem, Esq. (via email)

The Clerk of Court is directed to enter into the public record  
of this action the letter above submitted to the Court by

defendant

SO ORDERED.

11-28-17

DATE

VICTOR MARRERO, U.S.D.J.

<sup>2</sup> RPI's November 20, 2017 letter does not address each objection raised in the Trustee's November 13, 2017 letter. As one example, RPI's response makes no reference to the fact that New York law precludes unjust enrichment claims where, as here, RPI alleges that a valid contract governs the subject matter of its claim. See Trustee's Nov. 13, 2017 Ltr. at 2.

<sup>3</sup> The Trustee respectfully requests that Your Honor also provide guidance regarding the proposed schedule for any formal motion practice at or before the Conference, so that the Parties may plan accordingly.